

## § 188.6

(4) Direct the preparation of environmental documents for specific proposed actions, when required;

(5) Provide, when appropriate, consolidated Department of Defense comments requested by other Federal agencies on draft and final environmental impact statements;

(6) Review proposed issuances of the Office of the Secretary of Defense that may have environmental implications; and

(7) Maintain liaison with the Council on Environmental Quality, the Environmental Protection Agency, the Office of Management and Budget, other Federal agencies, and State and local groups with respect to environmental analyses for proposed DoD actions affecting the quality of the environment in the United States.

(b) The *General Counsel, DoD*, shall provide advice and assistance concerning the requirements of this part.

(c) The *Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff, Directors of Defense Agencies, and Commanders of the Unified and Specified Commands*, for operations under their jurisdiction, shall:

(1) Assess environmental consequences of proposed programs and actions within their respective DoD Component;

(2) Prepare and process environmental documents as required by this part;

(3) Integrate environmental considerations into their decisionmaking processes;

(4) Ensure that regulations and other major policy issuances are reviewed for consistency with the requirements of this part;

(5) Provide comments on environmental impact statements for actions within their area of expertness of concern; and

(6) Designate a single point of contact for matters pertaining to this part.

### § 188.6 Information requirements.

The environmental documents to be prepared under § 188.5, Enclosure 1, and 40 CFR parts 1500–1508 are assigned Re-

## 32 CFR Ch. I (7–1–98 Edition)

port Control Symbol DD–M(AR)1327 (formerly DD–H&E(AR)1327).

[44 FR 46842, Apr. 9, 1979. Redesignated and amended at 56 FR 64481, Dec. 10, 1991]

### ENCLOSURE 1—DoD IMPLEMENTING PROCEDURES

#### A. General

1. Section 1507.3, Council on Environmental Quality regulations directs that Federal agencies shall as necessary adopt procedures to supplement the CEQ regulations. This enclosure provides those DoD implementing procedures.

2. This enclosure must be read together with the CEQ regulations and the Act when applying the NEPA process.

3. This enclosure is organized sequentially from early planning to final implementation of an action. Throughout this enclosure, references to the CEQ regulations identify the applicable section of those regulations; e.g., CEQ 1501.2.

#### B. Planning Consideration

1. *Early Planning.* DoD Components shall integrate the NEPA process during the initial planning stages of proposed DoD actions to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to preclude potential conflicts.

2. *Lead Agency.* a. To determine the lead agency for preparing environmental documentation for proposed actions in which more than one DoD Component is involved, and in which no other Federal agency is involved, DoD Components shall apply the criteria in CEQ 1501.5. The ASD(MRA&L) shall resolve disagreements.

b. When another Federal agency is involved and there is disagreement in lead agency determination, the ASD(MRA&L) shall attempt to resolve the differences. If unsuccessful, the ASD(MRA&L) shall file a request with CEQ for lead agency determination.

3. *Advising Applicants.* CEQ 1501.2(d) provides for advising private applicants or other non-Federal entities when DoD involvement is reasonably foreseeable. Actions involving applications by private applicants or other non-Federal entities are limited within the Department of Defense and pertain primarily to permits, leases, and related actions concerning the use of DoD lands and property.

a. The following are types of actions initiated by private persons, State or local agencies, and other non-Federal entities for which DoD involvement may be reasonably foreseeable:

(1) Requests for easements and rights-of-way on DoD lands,

(2) Grazing and agricultural leases, and

(3) Requests for permits, licenses, or other agreements for use of DoD real property by non-DoD entities.

b. When DoD involvement is reasonably foreseeable, DoD Components shall consult early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations.

c. Public notices or other means used to inform or solicit applicants for permits, leases, or related actions shall describe the studies or information foreseeably required for later DoD Component action.

d. When considering leasing or otherwise providing real property to non-DoD entities, DoD Components shall initiate the NEPA process, when required, as early as possible.

4. *Determination of Requirement for an Environmental Impact Statement.* DoD Components shall determine as early as possible whether to prepare an environmental impact statement. Early determination ensures that necessary environmental documentation is prepared and integrated with the decision-making process. To determine whether to prepare an environmental impact statement, DoD Components shall determine whether the proposal is one that:

a. Normally requires an environmental impact statement,

b. Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion), or

c. Normally requires an environmental assessment but not necessarily an environmental impact statement.

5. *Actions That Normally Require an Environmental Impact Statement.* a. DoD Components shall determine if a proposal is one that normally requires an environmental impact statement. In some cases, it is readily apparent that a proposed action would have a significant impact on the environment. In that event, an environmental assessment is not required, and the DoD Component may begin the environmental impact statement phase. To determine those actions that normally do require the preparation of an environmental impact statement, the following considerations, which DoD Components may supplement, are provided:

(1) Potential for significant degradation of environmental quality,

(2) Potential for threat or hazard to the public,

(3) Potential for significant impact on protected natural or historic resources.

b. DoD component procedures will identify those typical classes of actions that normally require the preparation of environmental impact statements.

c. In any case involving a proposed action of the sort that normally does require an environmental impact statement, a DoD Component may still prepare an environmental assessment to determine if an environmental

impact statement is required based on the particular facts. If a determination is made based on the assessment that no environmental impact statement is required on the particular facts, a finding of no significant impact will be prepared and made available to the public in accordance with paragraph C.4. of this enclosure.

6. *Categorical Exclusion.* The CEQ regulations provide for the establishment of categorical exclusions (CEQ 1507.3(b)) for those actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. Categorical exclusions will help DoD Components avoid unnecessary effort and concentrate resources on significant environmental issues.

a. *Criteria.* Considerations to assist in identifying categories of actions that normally do not require either an environmental impact statement or an environmental assessment include:

(1) Minimal or no significant effect on environmental quality,

(2) No significant change to existing environmental conditions,

(3) No significant cumulative environmental impact,

(4) Social and economic effects only,

(5) Similarly to actions previously assessed and found to have no significant environmental impact.

b. *List of Categorical Exclusions.* Categories of actions that the Department of Defense has determined to have no significant effect on the quality of the human environment and for which environmental impact statements and environmental assessments are not required are identified in Annex A to this enclosure.

c. *Changes to the List of Categorical Exclusions.* (1) The DoD list of categorical exclusions is reviewed and refined as additional categories are identified. DoD Components may recommend additions or changes to this list. Recommendations shall be submitted to the ASD (MRA&L).

(2) DoD Components are encouraged to include in their regulations to implement this Directive additional categorical exclusions that they identify. Categorical exclusions that one DoD Component identifies that may be applicable to other DoD Components should be brought to the attention of the ASD(MRA&L).

d. *Extraordinary Circumstances.* If extraordinary circumstances exist indicating that a normally excluded action may have a significant environmental effect, an environmental assessment will be prepared for such otherwise categorically excluded action. Factors to consider in determining whether extraordinary circumstances exist include:

- (1) Greater scope or size than normally experienced for a particular category of action,
- (2) Potential for degradation, even though slight, of already existing poor environmental conditions,
- (3) Presence of endangered species, archeological remains, or other cultural, historic, or protected resources, and
- (4) Use of hazardous or toxic substances.

7. *Actions That Normally Require an Environmental Assessment.* When a proposal is not one that normally requires an environmental impact statement and does not qualify for categorical exclusion, the DoD Component shall prepare an environmental assessment.

#### C. Environmental Assessment Phase

1. *When to Prepare.* DoD Components shall begin preparation of an environmental assessment as early as possible after the determination that an assessment is to be prepared.

2. *Content and Format.* The environmental assessment is a concise public document to determine whether to prepare an environmental impact statement or whether to prepare a finding of no significant impact, to aid in compliance with NEPA when no environmental impact statement is necessary, and to facilitate preparation of a statement when one is necessary. Preparation of an environmental assessment generally does not require extensive research or lengthy documentation. The environmental assessment shall contain brief discussions of the following:

- a. Need for the proposed action,
- b. Alternatives considered when the proposed action involves unresolved conflicts concerning alternative uses of available resources,
- c. Environmental impacts of the proposed action and alternatives,
- d. Listing of agencies and persons consulted, and
- e. Conclusion of whether to prepare an environmental impact statement or a finding of no significant impact.

3. *Public Participation.* DoD Components shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing environmental assessments. In determining “to the extent practicable,” factors that may be considered include:

- a. Magnitude of the proposal,
- b. Likelihood of public interest,
- c. Need to act quickly, and
- d. National security classification issues.

4. *Finding of No Significant Impact.* If a DoD Component determines on the basis of the environmental assessment not to prepare an environmental impact statement, the DoD Component shall prepare a finding of no significant impact in accordance with CEQ 1501.4(e) and make the finding of no significant impact available to the affected public

as specified in CEQ 1501.4(e) and CEQ 1506.6. A finding of no significant impact is not required when the decision not to prepare an environmental impact statement is based on a categorical exclusion.

#### D. Environmental Impact Statement Phase

1. *Notice of Intent.* When a DoD Component decides to prepare an environmental impact statement, it shall publish a notice of intent in the FEDERAL REGISTER. The notice of intent shall be published before initiation of the scoping process.

2. *Scoping.* After determination that an environmental impact statement should be prepared and publication of the notice of intent, the DoD Component shall initiate the scoping process in accordance with CEQ 1501.7.

3. *Preparation.* Detailed procedures for preparation of the environmental impact statement are provided in CEQ 1502. The recommended format provided in CEQ 1502.10 is the standard format for DoD environmental impact statements. Requests for exception will be submitted to the ASD(MRA&L) for approval on a case-by-case basis.

4. *Supplemental Environmental Impact Statements.* DoD Components may at any time supplement a draft or final environmental impact statement. DoD Components shall prepare a supplement to either the draft or final environmental impact statement in accordance with CEQ 1502.9(c). DoD Components normally will prepare, circulate, and file a supplement to a statement in the same manner (exclusive of scoping) as a draft or final statement. The supplement shall be included as part of the formal administrative record to be considered in the decision-making process. Exceptions to these procedures shall be requested from the ASD(MRA&L), who may undertake the discussions with the CEQ.

5. *Tiering.* DoD Components should emphasize the use of tiering (CEQ 1502.20) of environmental impact statements to eliminate repetitive discussions of the same issues and to focus the issues.

6. *Combining Documents.* Any environmental document prepared in the NEPA process may be combined with any other agency document to reduce duplication (CEQ 1506.4). If an environmental impact statement for a particular action already exists, regardless of what Federal agency prepared it, no new statement is required by this Directive (CEQ 1506.3).

7. *Incorporation by Reference.* DoD Components shall incorporate material into the environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action (CEQ 1502.21).

8. *Information on the NEPA Process.* Information or status reports on environmental impact statements and other elements of the

NEPA process shall be provided to interested persons upon request. This does not, however, encompass standing or blanket requests.

a. Each DoD Component shall designate in its regulation implementing this part where interested persons can obtain information.

b. For those actions relating to the Office of the Secretary of Defense, information is available by writing the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), Washington, D.C. 20301.

9. *Circulation of Environmental Impact Statements.* DoD Components shall circulate draft and final environmental impact statements as prescribed in CEQ 1502.19. In addition, DoD Components shall provide one copy of each draft and each final statement to the ASD(MRA&L).

10. *Classified Material.* It may be necessary for DoD Components to include classified material in environmental documentation. Classified information in environmental documents shall be safeguarded in accordance with Executive Order 12065 implemented by DoD 5200.1-R (32 CFR part 159). The requirements for circulation (CEQ 1502.19) and public involvement (CEQ 1506.6) do not apply to classified environmental documents except where segregation of material and circulation and involvement can be accomplished consistently with the provisions of DoD 5200.1-R. When feasible, environmental documents may be organized in such a manner that classified portions can be included as annexes so that unclassified portions can be made available to the public in the normal manner. This normally will not be possible when the proposal itself is classified.

#### E. Preimplementation Actions

1. *Decisionmaking.* DoD Components shall ensure that the NEPA process is integrated into the decisionmaking process. Because of the size and diversity of the Department of Defense, it is not feasible to describe in this part the decisionmaking process for each of the various DoD programs. Proposals and actions may be initiated at any level. Similarly, review and approval authority may be exercised at various levels depending on the nature of the action, funding, and authority. It is necessary, therefore, that DoD Components provide further guidance, commensurate with their programs and organization, for integration of environmental considerations into the decisionmaking process. That guidance should include procedures to ensure that:

a. Major decision points are designated for principal programs and proposals likely to have a significant effect on the quality of the human environment, and steps are taken to ensure that the NEPA process coincides with these decision points.

b. Relevant environmental documents, comments, and responses accompany a pro-

posal through existing DoD Component review processes so that they can be considered by DoD Component decisionmakers.

c. The alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in relevant environmental documents, and the decisionmaker considers all the alternatives described in the environmental impact statement.

2. *Record of Decision.* In those cases requiring environmental impact statements, DoD Components, at the time of the decision or, if appropriate, the proposal to Congress, shall prepare a concise public record of agency decision. The record of decision is not intended to be an extensive, detailed document. Rather, it is a concise document that sets forth the decision, identifies the alternatives considered in reaching the decision, specifies the environmentally preferable alternative or alternatives, indicates other factors that were balanced in the decision-making process, and states whether all practicable means to avoid or minimize environmental harm have been adopted, and if not, why not (CEQ 1505.2).

3. *Mitigation.* Throughout the NEPA process, DoD Components shall, where possible, give consideration to mitigation measures to avoid or minimize environmental harm. Mitigation measures or programs shall be identified, when appropriate, in the environmental documents and made available to decisionmakers. Mitigation and other conditions that have been established in the environmental impact statement or during its review, and that have been committed as part of the decision, shall be implemented.

4. *Monitoring.* If a DoD Component determines that monitoring is necessary to ensure that mitigation measures, to which a commitment has been made, are carried out, it shall adopt a monitoring program. DoD Components shall, upon request, provide monitoring information to the public and to cooperating and commenting agencies, as specified in CEQ 1505.3. This does not, however, include standing or blanket requests for periodic reporting.

5. *Emergencies.* In the event of an emergency, DoD Components may be required to take immediate action with significant environmental impact. This includes actions that must be taken to promote the national defense or security and that cannot be delayed, and actions necessary for the protection of life or property. DoD Components shall notify the ASD(MRA&L) of the emergency, who shall undertake the required consultation with the CEQ. In no event shall DoD Components delay an emergency action necessary to the national security, or for preservation of human life, for the purpose of complying with the provisions of this Directive or the CEQ regulations. If an emergency requires that an action be taken without delay, the ASD(MRA&L) shall be notified as

promptly as is possible. The requirement for notification where action must be taken without delay is not a requirement for prior notification.

#### ANNEX A—DoD LIST OF CATEGORICAL EXCLUSIONS

1. Preparation of regulations, directives, manuals, or other guidance documents that implement, without substantial change, the regulations, directives, manuals, or other guidance documents from higher headquarters or another Federal agency.
2. Preparation of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusion.
3. Routine installation maintenance and grounds-keeping activities.
4. Minor construction conducted in accordance with an approved installation master plan that does not significantly alter land use, provided that the operation of the completed project would not of itself have a significant environmental impact.
5. Studies that involve no commitment of resources other than manpower and funding.
6. Proposed actions that, based on sound judgment, are of such an environmentally insignificant nature as clearly not to meet the threshold for requiring an environmental assessment or environmental impact statement.
7. Other categories as identified by DoD Components in their regulations implementing this part.

### PART 189—MINERAL EXPLORATION AND EXTRACTION ON DoD LANDS

Sec.

- 189.1 Purpose.
- 189.2 Applicability and scope.
- 189.3 Definitions.
- 189.4 Policy.
- 189.5 Responsibilities.
- 189.6 Procedures.
- 189.7 Summary of mineral leasing authorities.

AUTHORITY: 30 U.S.C. 21a, 22, 181 *et seq.*, 351 *et seq.*, 601 *et seq.*, 1001 *et seq.*, 1601 *et seq.* 40 U.S.C. 471. 43 U.S.C. 155 *et seq.*

SOURCE: 48 FR 48824, Oct. 21, 1983, unless otherwise noted. Redesignated at 56 FR 64481, Dec. 10, 1991.

#### § 189.1 Purpose.

Under 30 U.S.C. 21a, 22, 181 *et seq.*, 351 *et seq.*, 601 *et seq.*, 1001 *et seq.*, and 1601 *et seq.*, 40 U.S.C. 471, and 43 U.S.C. 155 *et seq.*, this rule establishes policy, assigns responsibilities, and provides procedures for making DoD lands avail-

able for mineral exploration and extraction.

#### § 189.2 Applicability and scope.

(a) This Directive applies to the Office of the Secretary of Defense and the Military Departments (including their National Guard and reserve components).

(b) It applies to DoD-controlled lands acquired or withdrawn from the public domain (including Army civil works lands) within the United States and its territories and possessions for which the mineral rights are owned by the United States, with the following exceptions:

(1) Mineral leasing of lands situated within incorporated cities, towns, and villages (30 U.S.C. 351 *et seq.* and 181 *et seq.*).

(2) Mineral leasing of tidelands or submerged lands (30 U.S.C. 351).

(3) Certain hardrock minerals known as locatables (30 U.S.C. 22).

(4) A class of minerals composed of sand and gravel known as saleables (30 U.S.C. 601 *et seq.* and 41 CFR 101-47.302-2).

#### § 189.3 Definitions.

(a) *Leasable minerals.* Minerals, such as oil and gas, that are owned by the United States and that have been authorized under statute as potential minerals for extraction under a mineral lease (30 U.S.C. *et seq.*, 181 *et seq.*, and 1001 *et seq.*).

(b) *Locatable minerals.* Minerals, such as gold and silver, that are owned by the United States, that are on public domain lands, that are subject to discovery and claim, and that are not leasable or saleable (30 U.S.C. 22).

(c) *Mineral lease.* A grant of a right to explore for and extract leasable minerals. No surface occupancy, drilling, or other mineral extraction is permitted until an operations plan is approved by the DoI in consultation with the Military Department concerned.

(d) *Multiple-use principle.* The integrated management of all resources, each with the other, to achieve their optimum use and enjoyment while maintaining environmental and other qualities in balance.

(e) *Permit.* Temporary permission to conduct seismic or other geological